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7 Information, Inc., and CoStar Group, Inc.

8 **IN THE UNITED STATES DISTRICT COURT**

9 **FOR THE DISTRICT OF ARIZONA**

10 PETER STROJNIK, an individual,) Case No. 2:08-CV-01276
11 Plaintiff,)
12 v.)
13)
14 THE COSTAR REALTY INFORMATION,)
15 INC., a Corporation; COSTAR GROUP,)
16 INC.,)
17 Defendants.)

18 Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, defendants The Costar Realty
19 Information Inc. and Costar Group, Inc. (“Defendants”) hereby remove the above-entitled
20 action, previously pending as Case No. CC2008 123579 in the Justice Court, Maricopa
21 County, Arizona, to the United States District Court for the District of Arizona.

22 **BASIS FOR REMOVAL**

23 Removal is proper for the following reasons:

24 1. Under 28 U.S.C. § 1441(a), “any civil action brought in a State court of
25 which the district courts of the United States have original jurisdiction, may be removed
26 by the defendant or defendants, to the district court of the United States for the district and
27 division embracing the place where such action is pending.”

1 2. This action is pending in the Justice Court of Maricopa County, Arizona,
2 Case No. CC2008 123579. The United States District Court for the District of Arizona
3 embraces Maricopa County within its jurisdiction.

4 3. On or about June 10, 2008, Plaintiff filed its Complaint in this action (see
5 Exh. A attached hereto).

6 4. Plaintiff sent Defendants a copy of the Summons and Complaint by certified
7 mail on June 11, 2008. Copies of the Summons and Complaint are attached hereto as
8 Exhibit A and B, respectively.

9 5. The Summons and Complaint constitute all of the process, pleadings and
10 orders served upon or received by Defendants in this case pursuant to 28 U.S.C.
11 § 1446(a).

12 6. In the general allegations section of his Complaint, Plaintiff alleges that
13 “Defendants e-mailed to Plaintiff Exhibit 1 for the purpose of encouraging Plaintiff to
14 purchase, rent, or invest in the property, goods or services of the type described in the e-
15 mail.” Complaint at ¶ 3.

16 7. Plaintiff further alleges that “[u]pon information and belief, the e-mails [sic]
17 was sent from a computer located in this state and/or Defendants know or had reason to
18 know that Plaintiff’s e-mail address is held by a resident of this State.” *Id.* at ¶ 3.

19 8. Plaintiff’s Complaint alleges two (2) causes of action. The first cause of
20 action is a claim that Defendants violated the Arizona Commercial Electronic Mail Act
21 (“ACEMA”). *Id.* at ¶¶ 7-17.

22 9. In his first cause of action, Plaintiff alleges that the “e-mail described above
23 is an ‘unsolicited commercial electronic e-mail,’ that is, it is a commercial electronic mail
24 message sent, without the consent of Plaintiff, by Defendants with whom Plaintiff does
25 not have an established business relationship.” *Id.* at ¶ 8.

26 10. Plaintiff further alleges that ACEMA provides that “a sender of electronic
27 mail shall not do any of the following acts: a) Falsify electronic mail transmission
28 information or other routing information for unsolicited commercial electronic mail. b)

1 Use false or misleading information in the subject line. c) Use a third party's internet
2 address or domain name without the third party's consent for the purpose of transmitting
3 electronic mail inn a way that makes it appear that the third party was the sender of the
4 mail." *Id.* at ¶ 10.

5 11. Plaintiff also alleges that ACEMA "provides that if a sender of electronic
6 mail sends unsolicited mail or maintains a database for the purpose of sending unsolicited
7 commercial electronic mail, the sender shall do the following: a) Use the exact characters
8 'ADV:' as the first four characters in the subject line of the unsolicited commercial
9 electronic mail. b) Provide a procedure that allows recipients, at no cost to the recipients,
10 to easily do both of the following: i) Remove themselves from the sender's electronic
11 mail address lists . . . ii) Restrict the future sale or transfer of the recipient's electronic
12 mail address information to another person or organization for the purpose of sending
13 commercial electronic mail." *Id.* at ¶ 11.

14 12. Plaintiff also alleges that "[b]y sending the e-mail, Exhibit 1, to Plaintiff,
15 Defendants violated ACEMA." *Id.* at ¶ 13.

16 13. Plaintiff's second cause of action is a claim under the Arizona Consumer
17 Fraud Act ("ACFA"). *Id.* at ¶¶ 18-23.

18 14. In that cause of action, Plaintiff alleges that "[p]ursuant to A.R.S. § 44-
19 1327.01(c), a violation of ACEMA is unlawful practice pursuant to A.R.S. § 44-1522,
20 [ACFA]; Plaintiff has a private cause of action for violation of ACFA." *Id.* at ¶ 19.

21 15. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§
22 1331 and 1441(b) because ACEMA is pre-empted by the Assault of Non-Solicited
23 Pornography and Marketing Act ("CAN-SPAM Act"), 15 U.S.C. §§ 7701 et al.

24 16. Although courts generally defer to a plaintiff's choice to plead state law
25 claims, there exist certain "situations where even a well-pleaded state law complaint will
26 be deemed to arise under federal law for jurisdictional purposes." *Holman v. Laulo-Rowe
Agency*, 994 F.2d 666, 668 (9th Cir. 1993).

27 17. Under the "artful pleading" doctrine, a well-pleaded state law claim presents

1 a federal question when a federal statute has completely preempted that particular area of
2 law. *See Balcorta v. Twentieth Century-Fox Film Corp.*, 208 F.3d 1102, 1107 (9th Cir.
3 2000). Thus, “any claim purportedly based on that preempted state law is considered,
4 from its inception, a federal claim, and therefore arises under federal law.” *Id.*

5 18. A complaint containing a completely preempted claim may be removed to
6 district court under § 1441. *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 8, 123 S.Ct.
7 2058, 156 L.Ed.2d 1 (2003).

8 19. The CAN-SPAM Act makes it unlawful for any person to transmit a
9 commercial electronic mail message that contains, or is accompanied by, header
10 information that is materially false or misleading. *See* 15 U.S.C. § 7704.

11 20. The CAN-SPAM Act specifically pre-empts state law statutes that regulate
12 commercial electronic messages. Section 7707(b) provides that “[t]his Act supersedes
13 any statute, regulation, or rule of a State or political subdivision of a State that expressly
14 regulates the use of electronic mail to send commercial messages . . .” *Id.* at § 7707(b).

15 21. Thus, the CAN-SPAM Act preempts ACEMA. As such, Plaintiffs’ first
16 cause of action under ACEMA is in reality based on federal law and therefore necessarily
17 raises a federal claim over which this Court has original jurisdiction under 28 U.S.C. §§
18 1331 and 1441(b). *Id.*

19 22. This Notice of Removal is timely under 28 U.S.C. § 1446(b) because
20 Defendants are effecting removal within 30 days of being served or otherwise receiving
21 the Complaint.

22 23. Defendants do not waive any objections or defenses they may have by filing
23 this Notice of Removal, including challenges to personal jurisdiction and/or service of
24 process. *Clark v. Wells*, 203 U.S. 164 (1906).

25 24. As required by 28 U.S.C. § 1446(d), Defendants will provide a copy of this
26 Notice to Plaintiff.

27 25. As required by 28 U.S.C. § 1446(d), Defendants will file a copy of this
28 Notice with the Justice Court of Maricopa County.

1 WHEREFORE, Defendants hereby remove the above-captioned action now
2 pending in the Justice Court of Maricopa County to this Court.
3

4 RESPECTFULLY SUBMITTED this 10th day of July, 2008.
5

6 /s/Cynthia A. Ricketts
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12 Telephone: (480) 606-5100
13 Facsimile: (480) 606-5101

14 Attorneys for Defendants The CoStar Realty
15 Information, Inc. and CoStar Group, Inc.
16

17 ORIGINAL of the foregoing filed
18 this 10th day of July, 2008,
19 with COPY hand-delivered to:
20

21 Honorable C. Steen McMurray
22 Encanto Justice Court
23 620 W. Jackson, Suite 1045
24 Phoenix, Arizona 85003

25 COPY of the foregoing mailed
26 this 10th day of July, 2008, to:
27

28 Peter Strojnik
The Law Firm of Peter Strojnik
3030 North Central Avenue, Suite 1401
Phoenix, Arizona 85012
Attorney for Plaintiff

29 /s/Linda Farrell
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